

ORDINANCE NO. 16.128

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF SCOTTS VALLEY ADOPTING A
MORATORIUM ON MEDICAL MARIJUANA DISPENSARIES**

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
SCOTTS VALLEY:**

WHEREAS, in 1996, the citizens of the State of California approved Proposition 215, the Compassionate Use Act of 1996, which was codified as California Health and Safety Code § 11362.5 (“Act”); and,

WHEREAS, the Act prohibits the provisions of law making unlawful the possession or cultivation of marijuana from applying to a qualified patient, or to a patient’s primary caregiver, who possesses or cultivates marijuana for the personal medical use of the patient upon the recommendation of a physician, and also prohibits the criminal prosecution or punishment of a physician for having recommended marijuana to a patient for medical purposes; and,

WHEREAS, thereafter the State Legislature enacted Senate Bill 420 (“Medical Marijuana Program”), codified as California Health and Safety Code § 11362.7 and following, which requires the State Department of Health Services to establish and maintain a voluntary program for the issuance of identification cards to qualified patients and primary caregivers, and prohibits the arrest of a qualified patient or primary caregiver with a valid identification card for the possession, transportation, delivery or cultivation of medical marijuana; and,

WHEREAS, the Medical Marijuana Program provides statutory guidance for medical marijuana use and cultivation, but it does not explicitly address the role of dispensaries, nor does it require that cities provide for or allow the establishment and/or operation of medical marijuana dispensaries; and,

WHEREAS, notwithstanding the passage of the Act and the Medical Marijuana Program, the possession, sale and distribution of marijuana is prohibited by the Controlled Substances Act, 21 U.S.C. § 841, and section 11359 of the California Health and Safety Code; and,

WHEREAS, California state law does not authorize the sale or distribution of marijuana by Medical Marijuana Dispensaries to a primary care giver, a qualified patient or a person with an identification card, as the terms are defined in section 11362.7 of the California Health and Safety Code; and,

WHEREAS, the Medical Marijuana Dispensaries have been established in numerous locations in California, and as a consequence, local agencies have reported negative secondary effects on the community, which effects include illegal drug activity and drug sales in the vicinity of dispensaries; robbery of persons leaving dispensaries; driving

under the influence of a controlled substance by persons who have obtained marijuana from a dispensary; persons acquiring marijuana from a dispensary and then selling it to a non-qualified person; burglaries and robberies; and an increase in vacancies in the commercial areas in the vicinity of such businesses; and,

WHEREAS, the California Police Chiefs Association compiled an extensive report detailing the negative secondary effects described above from Medical Marijuana Dispensaries, attached hereto as Exhibit A, and the City Council hereby finds that the report contains persuasive anecdotal and documented evidence that Medical Marijuana Dispensaries pose a threat to the public health, safety and welfare; and,

WHEREAS, California Health and Safety Code § 11362.5(c)(2) expressly provides that nothing in the Act shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for non-medical purposes; and,

WHEREAS, the City's Community Development Department staff has recently received inquiries from prospective medical marijuana dispensary operators; and

WHEREAS, current City zoning provisions do not specifically address the regulation or location of medical marijuana dispensaries or list medical marijuana dispensaries as a permitted or conditionally permitted use in any zoning district; and,

WHEREAS, the City Council, having duly considered the evidence presented at its February 17, 2010, meeting, hereby finds that because of the inconsistency between state and federal law relating to the possession, sale and distribution of marijuana, and because of the documented and immediate threat to the public health, safety and welfare from the presence of Medical Marijuana Dispensaries in a community, and until such time as the City Council has had an opportunity to determine the appropriateness of such facilities within the City, including, but not limited to evaluation of the legal authority to establish such facilities and the extent of regulatory controls needed, in the event that such facilities are determined to be desirable in the City, that it is in the best interest of the citizens of the City of Scotts Valley that the City adopt an interim policy requiring that all applications for establishment of Medical Marijuana Dispensaries be held in abeyance and prohibiting medical marijuana dispensaries in the City; and,

WHEREAS, Government Code section 65858 provides for the adoption of an emergency ordinance, without following procedures otherwise required for adoption of a zoning ordinance to protect public safety, health and welfare, by a four-fifths (4/5) vote of the legislative body. Adopting an interim emergency ordinance as an urgency measure to prohibit the approval of any application for a medical marijuana dispensary facility and the operation of medical marijuana dispensaries within the City is consistent with the stated requirements.

NOW THEREFORE, BASED UPON THE FOREGOING AND ALL EVIDENCE SUBMITTED TO IT, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SCOTTS VALLEY AS FOLLOWS:

SECTION 1: PURPOSE AND FINDINGS.

Medical marijuana dispensaries have been established in several locations in California, and as a consequence, some local agencies have reported increases in secondary effects such as illegal drug activity, illegal drug sales, robbery of persons leaving dispensaries, loitering in the vicinity of the dispensaries, falsely obtaining “identification cards” to illegally qualify for medical marijuana and other increases in criminal activity. At the present time, the State of California has not yet implemented a State-wide identification card program for qualified patients and their primary caregivers related to medical marijuana use as required under State law. Additionally, there are still unresolved legal issues related to Federal preemption of State law. The secondary effects specifically associated with a medical marijuana dispensary pose a current and immediate threat to public health, safety and welfare.

Recent inquiries to the City about opening medical marijuana dispensaries have increased and, at the present time, there are no regulatory requirements in effect that specifically address or allow this type of use. It is in the best interest for the health, safety and welfare of the citizens of the City of Scotts Valley to prevent potentially harmful secondary effects of medical marijuana dispensaries to adopt this urgency ordinance to allow City staff time to study the impacts of permitting medical marijuana dispensaries, potential licensing and regulatory procedures, as well as determine which zoning districts may be appropriate for such a use, and pursuant to what level of discretionary review.

SECTION 2: INTERIM SUSPENSION OF PERMITS, APPROVAL OR OTHER ENTITLEMENTS.

There shall be an interim moratorium on land use approvals and building permits in all zoning districts for medical marijuana dispensaries, which include any site, facility, location, use, cooperative business which distributes, sells, exchanges, processes, delivers, gives away or cultivates marijuana for medical purposes to qualified patients, health care providers, patients’ primary caregivers or physicians, pursuant to (1) Proposition 215, the “Compassionate Use Act of 1996” (Health & Safety Code § 11362.5) and SB 420 or (2) any State regulations adopted in furtherance thereof. Marijuana shall also mean cannabis and all parts of that plant. Based on the findings set forth herein, no permits, licenses, zoning ordinance interpretation of amendment or other applicable entitlements for use, which has as its result the final approval or allowance of medical marijuana dispensaries within the City of Scotts Valley, shall be granted or approved by any employee, department or commission of the City and no person or entity shall own, manage, conduct, or operate any medical marijuana dispensary as defined above for a period of forty-five (45) days immediately following the effective date of this ordinance, unless appealed or extended by a later enacted ordinance.

SECTION 3. IMMEDIATE THREAT TO HEALTH, SAFETY AND WELFARE.

Based on the findings set forth herein, this ordinance is adopted pursuant to California Government Code section 65858 and is required to address a current and immediate threat to public health, safety and welfare. The City Council has determined that granting land use approvals or building permits for medical marijuana dispensaries or allowing medical marijuana dispensaries to operate within the City would result in a threat to public health, safety and welfare.

SECTION 4. URGENCY PERIOD.

This ordinance is declared to be an urgency ordinance for preserving the public health, safety and welfare and to take effect and be enforced immediately upon adoption. Ten days prior to the expiration of this interim ordinance or any extension thereof, the City Council shall issue a written report describing the measures that have been taken to study the relevant issues and to establish policies and regulations for medical marijuana dispensaries within the City.

SECTION 5. AMENDMENTS TO ORDINANCE.

The City Council by ordinance after notice of public hearing, by the affirmative vote of at least four-fifths (4/5) of the City Council Members, may modify, amend, delete or add to this ordinance upon a finding that such action will implement and enforce the goals, policies and purpose of this ordinance.

SECTION 6. SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction such portion shall be deemed a separate, distinct and independent provision of such Ordinance and shall not affect the validity of the remaining portions thereof.

SECTION 7. REPEALS CONFLICTING ORDINANCES.

All other ordinances of the City of Scotts Valley or provisions of the Scotts Valley Municipal Code which are in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 8. CEQA COMPLIANCE.

The City Council finds and determines that the enactment of this Ordinance is not a "project" as that term is used in the California Environmental Quality Act ("CEQA;" Cal. Pub. Resources Code Section 21000 et seq.) or the State CEQA Guidelines (Cal. Code of Regs., Title 14, Section 15000 et seq.). Therefore, no environmental assessment is required or necessary.

SECTION 9. EFFECTIVE DATE.

In accordance with California Government Code section 65858, this ordinance was introduced and adopted at a regular meeting of the City Council of the City of Scotts Valley and shall be in full force and effect for a period of forty-five (45) days from the date of adoption. This period may be extended by the City Council in accordance with the provisions of California Government Code section 65858.

PASSED FOR THE PURPOSE OF ADOPTION ON THIS 17th day of February, 2010, by the following votes:

AYES: AGUILAR, BUSTICHI, JOHNSON, LIND, REED
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

APPROVED: _____/s/_____
Jim Reed, Mayor

ATTEST:

_____/s/_____
Tracy A. Ferrara, City Clerk

APPROVED AS TO FORM:

_____/s/_____
Kirsten Powell, City Attorney